

DRAFT: Oct. 4 2016

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**CITY OF MONROE
ORDINANCE NO. 0XX/2016**

AN ORDINANCE OF THE CITY OF MONROE, WASHINGTON, AMENDING SECTIONS 17.30.070, 20.12.080, 21.40.020, 21.40.030, 21.40.040, 21.50.090, 21.60.010, AND 21.60.020 OF THE MONROE MUNICIPAL RELATED TO PERMIT PROCESSING IMPROVEMENTS; PROVIDING FOR SEVERABILITY; AND ESTABLISHING AN EFFECTIVE DATE

WHEREAS, the Washington State Growth Management Act Goal 7 (RCW 36.70A.020(7)) states,

“7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability”

and

WHEREAS, Monroe Municipal Code (MMC) Title 21 entitled “Development Review Procedures” constitute the City of Monroe’s permit processing procedures to comply with RCW 36.70B “Local Project Review”; and

WHEREAS, MMC Title 21 has not gone through any substantial revisions since 2003, with only various miscellaneous amendments since that time; and

WHEREAS, from time to time, it is appropriate to review the review the City's permit processing procedures and identify amendments that apply best practices, find efficiencies, clarify codes and improve processes consistent with Washington State Growth Management Act Goal 7 (RCW 36.70A.020 (7)); and

WHEREAS, City of Monroe Comprehensive Plan Policy P.081 states, “Make City licensing and permitting regulations and procedures coherent, fair and expedient.”; and

WHEREAS, upon a review of MMC Title 21 it was found that both the City’s permit appeal timeline and public hearing notice timeline were greater than that used by many other jurisdictions; and

WHEREAS, the 15 working day appeal adds, when compared to other local jurisdiction appeal periods, up to a week of time for an applicant to record an approved document or to be issued a permit when no appeals are filed; and

WHEREAS, the City of Monroe’s use of a weekly paper to publish public hearing notices, when combined with a 15 day advanced public hearing notice requirement, results in long advanced timelines between scheduling the public hearing and the actual hearing itself; and

WHEREAS, WAC 197-11-800 (19) (a) and (b), categorically exempts from threshold determination and EIS requirements, procedural actions where the proposal, amendment or

adoption of an ordinance relates solely to governmental procedures, and contains no substantive standards respecting use or modification of the environment and text amendments resulting in no substantive changes respecting use or modification of the environment; and

WHEREAS, the proposed text amendments relate only to timelines and is not a substantive change respecting the use or modification of the environment and has therefore been determined by the City's SEPA Responsible Official to be categorically exempt from threshold determination and EIS requirements; and

WHEREAS, Monroe Municipal Code (MMC) subsection 21.20.040(B) requires that amendments to the subdivision code, zoning code, and environmental code (MMC Titles 17 through 20) require Planning Commission review and recommendation; and

WHEREAS, an amendment to MMC Title 17 and Title 20 is included in the code amendments; and,

WHEREAS, the Monroe Planning Commission received a briefing on the proposed permit processing code revisions on _____, 2016, held a duly noticed public hearing on _____, 2016, and deliberated on _____ 2016; and

WHEREAS, following the public hearing and deliberation, on _____, 2016 the Planning Commission adopted findings and recommended amendments related to permit processing code revisions; and

WHEREAS, on _____, 2016, the City Council considered the recommendation of the Planning Commission;

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF MONROE DO ORDAIN AS FOLLOWS:

Section 1. Monroe Municipal Code section 17.30.070 "Decision – Effective Date" is hereby amended as follows,

17.30.070 Decision – Effective date.

The designated official shall make findings of fact and conclusions **and issue a written decision**, to be effective ~~fifteen working days after issuance~~ **at the conclusion of the appeal period referenced in MMC section 17.30.080.**

Section 2. Monroe Municipal Code section 20.12.080 "Appeals" is hereby amended as follows,

20.12.080 Appeals.

A. Payment Under Protest. An applicant may pay the impact fees imposed by this chapter under protest in order to obtain a building permit. No appeal shall be permitted unless and until the impact fees at issue have been fully remitted to the city.

B. Standing. Only the applicant for the proposed development activity shall have standing to file an appeal under this section.

C. Request for Review. An applicant seeking to appeal the imposition, allowed credit against, or amount of impact fees pursuant to this chapter shall first file a request for review with the city engineer.

1. The request for review shall be submitted to the city engineer using a form provided by the city. The request for review shall be filed within twenty-one calendar days of payment of the impact fees at issue. Failure to timely file such a request shall conclusively waive the applicant's appeal.
2. No administrative fee will be imposed for the request for review by the city engineer.
3. The city engineer shall issue his/her determination in writing regarding a request for review within thirty calendar days after receiving the request for review.

D. Determinations of the city engineer pursuant to subsection (C) of this section may be appealed by the applicant to the hearing examiner. All appeals of a city engineer determination shall proceed as follows:

1. Within fourteen calendar days of the city engineer's determination, the applicant shall file a written notice of appeal with the city clerk. Failure to timely file such notice of appeal shall conclusively waive the applicant's appeal. The notice of appeal shall be signed by the applicant, shall include a copy of the city engineer determination challenged by the applicant, and shall contain the following information:
 - a. The applicant's name and address;
 - b. A description of the development activity at issue;
 - c. The amount of impact fees imposed by the city upon the development activity; and
 - d. A brief explanation as to why the applicant believes the city engineer's determination was erroneous.
2. The city clerk shall transmit the notice of appeal to the hearing examiner, together with all documents constituting the record for the city engineer's determination.
3. The hearing examiner shall schedule a hearing to be conducted within sixty calendar days of the city clerk's receipt of the notice of appeal. Prior to the hearing date, the applicant and the city may submit evidence and/or briefing pursuant to a schedule issued by the hearing examiner.
4. Within ten calendar working days after the close of the hearing, the hearing examiner shall enter written findings, conclusions, and a final decision with respect to the appeal. The hearing examiner may affirm, reverse, modify or remand, in whole or in part, the city engineer's determination; provided, that the hearing examiner shall affirm the city engineer's determination unless the applicant demonstrates that said determination is clearly erroneous; and

provided further, that, pursuant to RCW [82.02.070](#), the hearing examiner may modify the impact fee amount based upon principles of fairness.

5. The decision of the hearing examiner shall be final unless appealed to the city council in accordance with Chapter [21.60](#) MMC.

Section 3. Monroe Municipal Code section 21.40.020 "Notice of Public Hearing" is hereby amended as follows,

21.40.020 Notice of public hearing.

Notice of a public hearing for all development applications and all open record appeals shall be given as follows:

A. Time of Notices. Except as otherwise required **by law**, public notification of meetings, hearings, and pending actions under MMC Titles 17 through 20 shall be made by:

1. Publication at least ~~fifteen~~ **ten (10)** days before the date of a public meeting, hearing, or pending action in the official newspaper, if one has been designated, or a newspaper of general circulation in the city; and
2. The city shall mail a notice of the proposed application to owners identified by Snohomish County assessor records as owning property within five hundred feet of the property. The mailing shall take place at least ~~fifteen~~ **ten (10)** days before any pending action by the city, to allow for public comment; and
3. Posting at least ~~fifteen~~ **ten (10)** days before the meeting, hearing, or pending action in three public places where ordinances are posted and at least one notice on the subject property; and
4. Failure to provide all three types of notice will not necessarily prevent the hearing. It shall be at the discretion of the hearing examiner as to whether notice was reasonable and adequate.

B. Content of Notice. The public notice shall include a general description of the proposed project, action to be taken, a nonlegal description of the property or a vicinity map or sketch, the time, date and place of the public hearing, and the place where further information may be obtained.

C. Continuations. If, for any reason, a meeting or hearing on a pending action cannot be completed on the date set in the public notice, the meeting or hearing may be continued to a date certain and no further notice under this section is required.

Section 4. Monroe Municipal Code section 21.40.030 "Notice of appeal hearings" is hereby amended as follows,

21.40.030 Notice of appeal hearings.

In addition to the posting and publication requirements of MMC [21.40.020](#), notice of appeal hearings shall be as follows:

- A. For administrative approvals of lot boundary adjustments and short plats, notice shall be mailed, **emailed or hand delivered** to parties of record.
- B. For planning commission recommendations on quasi-judicial actions, notice shall be mailed, **emailed or hand delivered** to parties of record from the planning commission public hearing.
- C. For all recommendations and decisions of the hearing examiner, notice shall be mailed, **emailed or hand delivered** to parties of record from the hearing examiner public hearing.

Section 5. Monroe Municipal Code section 21.40.040 "Notice of decision" is hereby amended as follows,

21.40.040 Notice of decision.

A written notice for all final decisions and hearing examiner recommendations shall be sent to the applicant and all parties of record within five working days of city receipt, via United States mail, **email or hand delivery**, of the decision by the hearing examiner or other hearing body.

Section 6. Monroe Municipal Code section 21.50.090 "Procedures" is hereby amended as follows,

21.50.090 Procedures.

- A. Time for Appeal. Any interested party who participated in the public hearing by testifying or submitting written evidence, other than a petition, aggrieved by the hearing examiner's final decision on all procedures listed under MMC [21.20.050](#), or any other permit for which the hearing examiner takes final action, may submit a notice of appeal to the community development department, upon a form furnished by the department in accordance with MMC [21.60.020](#). No appeal shall be allowed from a hearing examiner's recommendation and only final decisions of the hearing examiner may be appealed. For purposes of this section, the date of issuance of the hearing examiner's decision shall be three days after the date on which the hearing examiner's decision is mailed, **emailed or hand delivered** to all parties of record.
- B. Notice to Parties of Record. Within five working days of receipt of an appeal, the city shall mail, **email or hand deliver** notice to all parties of record.
- C. Opportunity to Provide Comments. Parties of record may submit written statements in support of their positions regarding the appeal within ten working days of the date of mailing of the appeal notice. The written statements will not be a part of the closed record, but will only identify the error being appealed.
- D. Council Review Procedures. The city council shall hold a closed record hearing. The hearing shall consider the record and appeal. No additional evidence or testimony shall be accepted by the city council. If the council determines that further review and consideration of existing evidence is required, it may remand the matter to the examiner. The cost of transcription of the hearing record shall be borne by the appellant.

E. Council Evaluation Criteria. The consideration by the city council shall be based solely on the record, the hearing examiner's decision and the appeal.

F. Findings and Conclusions Required. If, upon appeal of a decision of the hearing examiner, and after examination of the record, the council determines that a substantial error in fact or law exists in the record, it may remand the proceeding to the examiner for reconsideration, or request the city attorney to prepare findings and conclusions in support of its decision on the appeal.

G. Decision Documentation. In any event, the decision of the city council shall be in writing and shall specify any modified or amended findings and conclusions other than those set forth in the report by the hearing examiner.

H. Council Action Final. The action of the council approving, modifying or rejecting a decision of the examiner shall be final and conclusive, unless appealed as provided by law.

Section 7. Monroe Municipal Code section 21.60.010 "Appeal of administrative interpretations and appeals" is hereby amended as follows,

21.60.010 Appeal of administrative interpretations and appeals.

A. Applicants or parties of record may appeal administrative interpretations and administrative approvals to the hearing examiner, within ~~fifteen working~~ **fourteen (14)** days of the decision, at an open record hearing. The hearing examiner shall have the authority to hear and decide appeals from any order, requirement, permit, decision or determination made by the zoning code administrator or his designee in the administration and enforcement of provisions of this code.

1. The appeal shall be filed on forms provided by the community development department and must be filed in original form.
2. The appeal shall set forth the specific reason, rationale, and/or basis for the appeal.
3. Payment of the appeal fee, as specified in the city's fee resolution, shall occur at the time the appeal is filed.

B. Except when superior court or any other body is the designated appeal body, or the Monroe Municipal Code or state law requires otherwise, appeals of the hearing examiner's appellate decisions for administrative interpretations and administrative approvals, by a party of record, are made to the city council at a closed record hearing, in accordance with MMC [21.50.070](#). All appeals shall be filed in writing and shall be based on the review of the record established at the hearing before the hearing examiner in accordance with MMC [21.50.090](#) and [21.60.020](#).

Section 8. Monroe Municipal Code section 21.60.020 "Appeal to the city council" is hereby amended as follows

21.60.020 Appeal to the city council.

A. Filing. Every appeal to the city council shall be filed with the director of community development within ~~fifteen working~~ **fourteen (14)** days after the date of the recommendation or decision of the matter being appealed.

B. Contents. The notice of appeal shall contain a concise statement identifying:

1. The decision being appealed.
2. The name and address of the appellants and their interest(s) in the matter.
3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.
4. The desired outcome or changes to the decision.
5. The appeals fee.

Section 9. Severability. Should any section, paragraph, sentence, clause or phrase of this ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this ordinance be pre-empted by State or federal law or regulation, such decision or pre-emption shall not affect the validity or enforceability of the remaining portions of this ordinance or its application to other persons or circumstances.

Section 10. Effective Date. This ordinance shall be in full force and effect five (5) days from and after its passage and approval and publication as required by law.

PASSED by the City Council and APPROVED by the Mayor of the City of Monroe, at a regular meeting held this _____ day of _____, 2016.

First Reading: _____, 2016
 Adoption: _____, 2016
 Published: _____, 2016
 Effective: _____, 2016

CITY OF MONROE, WASHINGTON:

Geoffrey Thomas, Mayor

(SEAL)

ATTEST:

APPROVED AS TO FORM:

Elizabeth M. Smoot, MMC, City Clerk

J. Zachary Lell, City Attorney